1774. *August* 6. JAMES LIVY *against* DAVID MUDIE, &c.

COMMUNITY.

Magistrates, charged to pay a sum due by bond granted by them in their corporate capacity, were found entitled to suspension, without caution, on granting conveyance of or security on the Town's funds,—not being personally liable, except while in office and while the funds are under their administration.

[*Faculty Collection, VI.* 353; *Dictionary*, 2512.]

COALSTON. A bond granted by magistrates, as representing the community, makes the community the debtor. The charge ought to have been against the present magistrates. The magistrates may be free by giving up the funds of the community: they are not personally bound to pay the debt. This charge is not against the magistrates for the time being. There is another ground, that the granters of the bond were guilty of fraud by borrowing money when they knew that the burgh was bankrupt. But that will not do in the present shape: the question must be tried by a common action.

On the 6th August 1774, "the Lords passed the bill without caution;" altering Lord Kennet's interlocutor on advising with the Lords.

Act. A. Elphinston. *Alt.* A. Lockhart.

1774. *August* 9. ALEXANDER and ANDREW STEWARTS *against* DANIEL CAMPBELL of Shawfield.

MEMBER OF PARLIAMENT.

Effect of a restricted enrolment upon the request of the party at the Michaelmas meeting, without a previous claim being lodged for that restriction. Is a complaint of such enrolment, at the instance of other freeholders, competent under the authority of the Act 16th Geo. II., where no objections were lodged upon a change of circumstances?

[*Faculty Collection, VI.* 355; *Dictionary*, 8834.]

PRESIDENT. The proper way to try the question is by a claim and objection. This case falls not within the Act of Parliament.

ALEMORE. To speak in the style of the day [the races] I should be sorry to see a horse cut out who is likely to yield so much sport. The case of restricting is within the spirit of the Act. Were it otherwise, the consequences might be dangerous to the rolls. It is said that an objection may still be given in. *Answer*, With less ingenuity than is used in this case, Shawfield might be kept on the roll notwithstanding any objections.

PRESIDENT. In my opinion the restriction at the last Michaelmas meeting goes for nothing.

JUSTICE-CLERK. From the nature of the thing a gentleman enrolled upon a

large barony may have occasion to dispone away a part of it, and may restrict his claim to the residue. The freeholders ought not to take into consideration the consequences of this. All that they ought to have done was to record the fact. Instead of this, they ordered Shawfield to stand on the roll for his part reserved. I cannot imagine that the freeholders can be excluded from objecting, for that the legal notice was not given.

MONBODDO. If the restriction was to be considered as an enrolment, I should be of Lord Alemore's opinion.

On the 9th August 1774, "in respect that the restriction was inept, the Lords found no necessity to determine on the complaint, reserving to parties to object on change of circumstances."

Act. A. Lockhart. *Alt.* R. M'Queen.

1774. *August* 10. WILLIAM BOYD ESQ. *against* GENERAL JAMES ABERCROMBIE.

MEMBER OF PARLIAMENT.

An objection to a decree of division, that no notice was taken of a grassum paid at the commencement of a tack, was repelled.

[*Faculty Collection, VI.* 358; *Dictionary*, 8669.]

HAILES. I have a difficulty as to the grassums having been omitted in dividing the valuation. Had the objection been repelled in the *Forfar* case, I would have repelled it here. But in the *Forfar* case the grassum had been paid, not for a subsisting tack, but for a tack which expired before the date of the division. The case here is of a nineteen years' lease, at a rent of L.32, with a grassum of L.100 paid down. This, in calculation, may be equal to L.10 *per annum* for nineteen years; so that, if a correspondent rent had been paid instead of a grassum, the rent would have been L.42 not L.32. This makes a very wide difference.

COALSTON. Divisions of valuation must be proportioned according to the rent of the lands. If the grassum were small, and the rent large, I would not consider the grassum. In a valuation of teinds, a grassum, if large, would go into the account.

PRESIDENT. In all the counties that I know, grassums are not brought *in computo*. As to the valuation of teinds, the case does not apply. If, in the Teind Court, a grassum is brought into the account, on the other hand a deduction is allowed for improvement. Besides, the decision of the Commissioners is good *ex facie* of the proof.

JUSTICE-CLERK. In the case of *Forfar* the grassums were not paid for the tacks of a short continuance, but for the hope of remaining as tenants for a longer space. According to the objection now made, no valuation in the kingdom could stand. This not the rule in first valuation.

AUCHINLECK. The intention of valuation was, that every man should pay